

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7440

Petition of Entergy Nuclear Vermont Yankee,)
LLC, and Entergy Nuclear Operations, Inc., for)
amendment of their Certificates of Public Good)
and other approvals required under 10 V.S.A.)
§§ 6501-6504 and 30 V.S.A. §§ 231(a), 248 &)
254, for authority to continue after March 21,)
2012, operation of the Vermont Yankee Nuclear)
Power Station, including the storage of spent-)
nuclear fuel)

Order entered: 9/26/2008

ORDER RE: VPIRG MOTION TO EXTEND DISCOVERY DEADLINE

On September 18, 2008, the Vermont Public Interest Research Group ("VPIRG") filed a motion with the Public Service Board ("Board") seeking an extension of the deadline for filing the second round of discovery requests on the Petitioners. Under the current schedule, that deadline was September 19, 2008; VPIRG does not identify a specific date to which the deadline should be extended.

In its motion, VPIRG contends that the Petitioners' responses to the first round of discovery are incomplete, in that the Petitioners have indicated that they are continuing to review materials they had preliminarily identified as privileged and will produce any responsive non-confidential materials that they determine not to be privileged. VPIRG also asserts that the Petitioners have withheld responsive documents as "Allegedly Confidential Information" pending the Board's issuance of a protective order. VPIRG maintains that the parties should receive complete responses to the first round of discovery before being required to file their second round of requests.

On September 24, 2008, Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (jointly, "Entergy VY"), filed a response to VPIRG's motion. Entergy asserts

that it has already produced substantial amounts of documents in response to discovery,¹ including responses (subject to objection) to all of VPIRG's first round of discovery requests. Entergy further asserts that the documents it had not yet produced are in response to a discovery request of another party – the New England Coalition, Inc. ("NEC") – a request that Entergy characterizes as "overbroad and unduly burdensome."² Entergy represents that it had already produced 8,872 documents in response to that particular request, and that it expected to complete production of non-privileged responsive documents by September 24, 2008. Entergy maintains that VPIRG could have propounded a partial second set of discovery requests based on the information it already provided. Entergy also maintains that it is appropriate for it to withhold "Allegedly Confidential Information" until a Board order is issued governing the treatment of such information.

On September 24, 2008, NEC submitted a response supporting VPIRG's motion.³ NEC asserts that it was unable to meet the existing deadline for the second round of discovery requests "in large part due to the fact that the Petitioner was unable to deliver responses to Round One until September 15th."⁴ NEC also states that Entergy has objected to NEC's initial discovery regarding reliability issues, and that without that information NEC has not been able to formulate follow-up discovery requests.

We conclude that VPIRG has shown good cause for the requested extension. The Petitioners' responses to the first round of discovery were due on September 12, 2008,⁵ and Entergy does not dispute that it failed to provide complete responses as of that date. While some of the documents that had not yet been forthcoming from Entergy may have been in response to the discovery request of another party, we have strongly encouraged parties with common

1. Entergy represents that it has produced "9,508 responsive, non-privileged, non-confidential documents and emails totaling 106,875 pages. . . ." Entergy Response at 1.

2. Entergy Response at 2.

3. Although NEC's response has not yet been formally filed, the Board received a copy of it by e-mail on September 24, 2008.

4. NEC Response at 2.

5. *See* Prehearing Conference Memorandum, 7/22/08, at 4.

interests to coordinate their participation in this proceeding. Indeed, our encouragement in this regard was in response to Entergy's own request that we require such coordination.⁶ We thus see no fault in VPIRG's reliance on discovery requests propounded by another party.

Nor do we find persuasive Entergy's argument that VPIRG should have issued a partial second set of discovery requests. Such a course would likely have not represented an efficient use of VPIRG's resources (which, we note, are much more limited than those at Entergy's disposal).

As for the Allegedly Confidential Information, Entergy may be entitled to withhold production until a protective order is issued, but Entergy did not file its motion for such an order until September 9, 2008. Because the motion indicated neither that all parties had consented to the requested order nor that time was of the essence, we have deferred ruling on that motion until all parties have had an opportunity to respond as provided by V.R.C.P. 78(b)(1). We are issuing a protective order concurrently with the instant Order, and we expect Entergy to produce Allegedly Confidential discovery responses expeditiously.

VPIRG did not propose a specific date to which its discovery deadline should be moved. Now that Entergy has apparently produced the remaining responsive information that is non-confidential and non-privileged, with non-privileged Allegedly Confidential Information to follow quickly, we conclude that the deadline for parties to submit second-round discovery requests to Entergy shall be extended to October 6, 2008. The Board will address any further adjustments to the schedule at the status conference scheduled for October 1, 2008.

So ORDERED.

6. Order of 8/13/08 at 3–4.

Dated at Montpelier, Vermont, this 26th day of September, 2008.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: September 26, 2008

ATTEST: s/Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)